

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

DEAN PATRICK MCDERMOTT, et al.,

Defendants.

CIVIL ACTION

NO. 19-4229-KSM

ORDER

AND NOW, this 24th day of June, 2022, it is hereby **ORDERED** as follows:

1. Upon consideration of Defendants' Motion to Preclude Evidence on the Timing of Prospectus Delivery (Doc. No. 82) and Plaintiff's Opposition to Defendants' Motion to Preclude Evidence on the Timing of Prospectus Delivery (Doc. No. 99), it is hereby ordered that Defendants' Motion to Preclude Evidence on the Timing of Prospectus Delivery (Doc. No. 82) is **DENIED**.

2. Upon consideration of Defendants' Motion in Limine to Preclude Plaintiff from Introducing Irrelevant Brokerage Account Documents (Doc. No. 83) and Plaintiff's Opposition to Defendants' Motion in Limine to Preclude Plaintiff from Introducing Irrelevant Brokerage Account Documents (Doc. No. 100), it is hereby ordered that Defendants' Motion in Limine to Preclude Plaintiff from Introducing Irrelevant Brokerage Account Documents (Doc. No. 83) is **GRANTED**.

3. Upon consideration of Defendants' Motion in Limine to Preclude Evidence Referencing Commission and Judicial Opinions (Doc. No. 84) and Plaintiff's Opposition to Defendants' Motion in Limine to Preclude Evidence Referencing Commission and Judicial

Opinions (Doc. No. 102), it is hereby ordered that Defendants' Motion in Limine to Preclude Evidence Referencing Commission and Judicial Opinions (Doc. No. 84) is **GRANTED**.

4. Upon consideration of Defendants' Motion in Limine to Preclude Plaintiff from Introducing Certain Evidence or Testimony Related to Dean McDermott's Ph.D. from LaSalle University (Doc. No. 85), Plaintiff's Opposition to Defendants' Motion in Limine to Preclude Plaintiff from Introducing Certain Evidence or Testimony Related to Dean McDermott's Ph.D. from LaSalle University (Doc. No. 101), and Plaintiff's Supplemental Submission in Further Support of Its Opposition to Defendants' Motion in Limine to Preclude Plaintiff from Introducing Certain Evidence or Testimony Related to Dean McDermott's Ph.D. from LaSalle University (Doc. No. 107), it is hereby ordered that Defendants' Motion in Limine to Preclude Plaintiff from Introducing Certain Evidence or Testimony Related to Dean McDermott's Ph.D. from LaSalle University (Doc. No. 85) is **GRANTED**.

5. Upon consideration of Defendants' Motion to Preclude Evidence and References Related to Settlement Orders (Doc. No. 86) and Plaintiff's Opposition to Defendants' Motion to Preclude Evidence and References Related to Settlement Orders (Doc. No. 102), it is hereby ordered that Defendants' Motion to Preclude Evidence and References Related to Settlement Orders (Doc. No. 86) is **GRANTED**.

6. Upon consideration of Plaintiff's Motion in Limine to Preclude Testimony Containing Legal Conclusions and Misstating the Law Concerning an Investment Adviser's Duty to Act in Clients' Best Interests and to Seek Best Execution (Doc. No. 87) and Defendants' Response to Plaintiff's Motion in Limine to Preclude Testimony Containing Legal Conclusions and Misstating the Law Concerning an Investment Adviser's Duty to Act in Clients' Best Interests and to Seek Best Execution (Doc. No. 96), it is hereby ordered that Plaintiff's Motion in

Limine to Preclude Testimony Containing Legal Conclusions and Misstating the Law Concerning an Investment Adviser's Duty to Act in Clients' Best Interests and to Seek Best Execution (Doc. No. 87) is **GRANTED IN PART** and **DENIED IN PART**.

7. Upon consideration of Plaintiff's Motion in Limine to Preclude Evidence and Argument About Examinations Conducted by Other Entities (Doc. No. 88) and Defendants' Opposition to Plaintiff's Motion in Limine to Preclude Evidence and Argument About Examinations Conducted by Other Entities (Doc. No. 95), Plaintiff's Motion in Limine to Preclude Evidence and Argument About Examinations Conducted by Other Entities (Doc. No. 88) is **GRANTED IN PART** and **DENIED IN PART**.

8. Upon consideration of Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Internal SEC Communications or the SEC Examination Process (Doc. No. 89) and Defendants' Response to Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Internal SEC Communications or the SEC Examination Process (Doc. No. 94), it is hereby ordered that Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Internal SEC Communications or the SEC Examination Process (Doc. No. 89) is **DENIED**. The Court reserves its ruling on the admissibility of the draft examination findings letters. The Commission **SHALL** produce the policies and procedures governing the examination process in effect during the Relevant Period, and such policies and procedures will be admissible at trial.

9. Upon consideration of Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Events Occurring After the Relevant Period (2013-2014) (Doc. No. 90) and Defendants' Opposition to Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Events Occurring After the Relevant

Period (2013-2014) (Doc. No. 97), it is hereby ordered that Plaintiff's Motion in Limine to Preclude Argument, Testimony, or Other Evidence Relating to Events Occurring After the Relevant Period (2013-2014) (Doc. No. 90) is **DENIED**.

10. Upon consideration of Plaintiff's Motion in Limine to Treat Certain Witnesses as Adverse Parties (Doc. No. 91) and Defendants' Response to Plaintiff's Motion in Limine to Treat Certain Witnesses as Adverse Parties (Doc. No. 98), it is hereby ordered that Plaintiff's Motion in Limine to Treat Certain Witnesses as Adverse Parties (Doc. No. 91) is **GRANTED IN PART** and **DENIED IN PART**.

It is **FURTHER ORDERED** that the objections to specific exhibits contained in the parties' pretrial memoranda (Docs. No. 103 & 104), are **GRANTED IN PART** and **DENIED IN PART**, as detailed in Appendices A and B to this Order.

IT IS SO ORDERED.

/s/ Karen Spencer Marston

KAREN SPENCER MARSTON, J.

APPENDIX A

The Court's Rulings on Defendants' Objections to the Commission's Exhibits

Exhibit	Document	Objection	Ruling
25	Investigative Testimony of Charles Bowers, dated December 18, 2018	Fed. R. Evid. 802	See Order on Deposition Designations (forthcoming)
26	Investigative Testimony of Daniel Nemeth, dated December 18, 2018	Fed. R. Evid. 802	See Order on Deposition Designations (forthcoming)
29	Deposition Testimony of Kathleen McDermott, dated July 24, 2020	Fed. R. Evid. 802	See Order on Deposition Designations (forthcoming)
30	Deposition Testimony of Ara Jabrayan, dated November 5, 2020	Fed. R. Evid. 802	See Order on Deposition Designations (forthcoming)
31	Declaration of Ara Jabrayan, dated September 9, 2019	Fed. R. Evid. 802	SUSTAINED
73	<i>In re Arleen W. Hughes</i> , 27 S.E.C. 629 (1948)	Fed. R. Evid. 403	SUSTAINED
74	<i>Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.</i> , No. 84 S. Ct. 275 (1963)	Fed. R. Evid. 403	SUSTAINED
75	<i>In re Kidder, Peabody & Co., Inc.</i> , 43 S.E.C. 911 (1968)	Fed. R. Evid. 403	SUSTAINED
76	<i>Geman v. Securities and Exchange Commission</i> , 334 F.3d 1183 (10th Cir. 2003)	Fed. R. Evid. 403	SUSTAINED
77	<i>In re IFG Network Securities, Inc.</i> , S.E.C. Release No. 2533 (2006)	Fed. R. Evid. 403	SUSTAINED
82	<i>In re Manarin Investment Counsel, Ltd.</i> , S.E.C. Release No. 33-9462, <i>et al.</i> (2013)	Fed. R. Evid. 403	SUSTAINED
83	<i>In re Montford & Co., Inc.</i> , S.E.C. Release No. 3829 (2014)	Fed. R. Evid. 403	SUSTAINED
84	<i>In re Donald L. Koch</i> , SEC Release No. 3836, <i>et al.</i> (2014)	Fed. R. Evid. 403	SUSTAINED
85	NASD Notice to Members: Unit Investment Trust Sales, dated March 2004	Fed. R. Evid. 403	SUSTAINED

Exhibit	Document	Objection	Ruling
86	“FINRA Fines Wachovia Units More than \$4.5 Million for Failures Relating to Trust and Mutual Fund Sales,” dated February 12, 2009	Fed. R. Evid. 403	SUSTAINED
87	“FINRA Orders Sun Trust Investment Services to Pay \$1.44 Million for Unsuitable UIT, Closed-End Fund and Mutual Fund Transactions,” dated July 22, 2010	Fed. R. Evid. 403	SUSTAINED
88	“Merrill Lynch to Pay More than \$2.5 Million Related to UIT Sales Charge Discount Failures,” dated August 18, 2010	Fed. R. Evid. 403	SUSTAINED
89	Indictment, <i>United States v. Thomas J. Kirk</i>	Fed. R. Evid. 403	SUSTAINED
90	Factual Basis, <i>United States v. Thomas J. Kirk</i>	Fed. R. Evid. 403	SUSTAINED
91	Letter from Richard W. Westling to the Hon. Martin L.C. Feldman regarding <i>United States v. Thomas J. Kirk</i> , dated November 1, 1996	Fed. R. Evid. 403	SUSTAINED
92	Expert Report of Marti P. Murray, dated December 18, 2020	<i>Daubert</i>	<i>See Order on Daubert Motions</i>
93	Expert Rebuttal Report of Marti P. Murray, dated January 15, 2021	<i>Daubert</i>	<i>See Order on Daubert Motions</i>
108	“Management Fee Rate Changes for Individual Accounts, Q1 2013 – Q4 2014”	Fed. R. Evid. 403	OVERRULED
109	“Portion of Accounts Always Charged Less than Schedule Advisory Fee Rate (2013 – 2014)”	Fed. R. Evid. 403	OVERRULED

APPENDIX B

The Court's Rulings on the Commission's Objections to Defendants' Exhibits

Exhibit	Document	Objection	Ruling
201	MIS Certificate of Organization-Domestic Limited Liability Company	Fed. R. Evid. 403	OVERRULED
202	MIA Certificate of Conversion and Articles of Organization	Fed. R. Evid. 403	OVERRULED
203	MIA SEC Registration	Fed. R. Evid. 403	OVERRULED
204	MIA-MIS Intercompany Sharing Agreement	Fed. R. Evid. 403	OVERRULED
232 – 266	RBC Settlement Statements (Commission Run), dated monthly from February 2015 – December 2016	Fed. R. Evid. 403	RULING RESERVED
268 – 273	RBC Best Execution “Regular and Rigorous Review for Q1 2013 – Q4 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	OVERRULED
276	MIA Regular Discretionary Investment Advisory Agreement	Fed. R. Evid. 403	OVERRULED
305	RBC Prospectus Delivery Confirmation Reports	Fed. R. Evid. 802	OVERRULED
306	RBC Reports Manual	Fed. R. Evid. 403	OVERRULED as to slides regarding prospectus delivery; SUSTAINED otherwise ¹
307	FINRA, Report on the Examination of McDermott Investment Services, LLC, dated October 25, 2013	Fed. R. Evid. 403	SUSTAINED
308	Letter from Eugene Bleier, FINRA, to Dean McDermott, dated December 2, 2013	Fed. R. Evid. 403	SUSTAINED
309	Email from Dean McDermott to Ara Jabrayan re: “Regulatory [sic] Office Visit,” dated April 29, 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	RULING RESERVED
310	Email from Dean McDermott to Mike Burnidge re: “Phone Call,” dated July 11, 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	RULING RESERVED
311	Email from Dean McDermott to Mike Burnidge re: “Commissions discussions,” dated July 15, 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	RULING RESERVED
312	Letter from Caroline Holmes, Florida Office of Financial Regulation, to Dean McDermott, dated July 14, 2015	Fed. R. Evid. 403	OVERRULED

¹ The Court encourages the parties to stipulate to the facts and timing of prospectus delivery.

Exhibit	Document	Objection	Ruling
313	Email from Mark Fowler to Karen Ackerman, <i>et al.</i> , re: “McDermott,” dated December 4, 2013	Fed. R. Evid. 403	OVERRULED
314	Email from Cesar Davis to Mark Fowler, <i>et al.</i> , re: “McDermott Investment Services, LLC,” dated December 3, 2013	Fed. R. Evid. 403	OVERRULED
319	Email from Mark Fowler to Karen Ackerman, <i>et al.</i> , re: “McDermott Investment Services,” dated December 19, 2013	Fed. R. Evid. 403	OVERRULED
321	Mark Fowler Handwritten Notes re: “McDermott Investment”	Fed. R. Evid. 403; Fed. R. Evid. 802	OVERRULED
322	Email from Mark Fowler to Karen Ackerman re: “McDermott Investment Services,” dated January 3, 2014	Fed. R. Evid. 403	OVERRULED
323	Email from Mark Fowler to Diane Hagy re: “McDermott Examination UIT Case,” dated February 11, 2014	Fed. R. Evid. 403	OVERRULED
325	Email from Mark Fowler to Karen Ackerman re: “McDermott,” dated March 7, 2014	Fed. R. Evid. 403	OVERRULED
328	Email from Mark Fowler to Diane Hagy re: “McDermott,” dated April 9, 2014	Fed. R. Evid. 403	OVERRULED
329	Email from Mark Fowler to Diane Hagy re: “McDermott Investment Securities,” dated April 14, 2014	Fed. R. Evid. 403	OVERRULED
331	Draft letter from Diane Hagy to Dean McDermott re: “Examination of: McDermott Investment Services, LLC,” dated August XX, 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	RULING RESERVED
332	Draft letter from Diane Hagy to Dean McDermott re: “Examination of: McDermott Investment Services, LLC,” dated August XX, 2014	Fed. R. Evid. 403; Fed. R. Evid. 802	RULING RESERVED
333	Email from Mark Fowler to Karen Ackerman re: “McDermott,” dated September 17, 2014	Fed. R. Evid. 403	OVERRULED
334	Email from Paul Lapinski to Dean McDermott re: “Follow-up request from Examination – December 2013,” dated October 10, 2014	Fed. R. Evid. 403	OVERRULED

Exhibit	Document	Objection	Ruling
335	“Examination Information for Broker-Dealers, Transfer Agents, Clearing Agencies, Investment Advisers, and Investment Companies” ²	Fed. R. Evid. 403	SUSTAINED
336	Email from Mark Fowler to Karen Ackerman re: “McDermott,” dated December 15, 2014	Fed. R. Evid. 403	OVERRULED
337	Email from Paul Lapinski to Mark Fowler re: “McDermott Sarkauskas proceeding,” dated February 20, 2015	Fed. R. Evid. 403	OVERRULED
338	Letter from Diane Hagy to Dean McDermott re: “Examination of McDermott Investment Services, LLC,” dated January 6, 2015	Fed. R. Evid. 403	OVERRULED
339	Email from Karen Ackerman to Mark Fowler re: “McDermott,” dated January 9, 2015	Fed. R. Evid. 403	OVERRULED
340	Letter from Dean McDermott to Diane Hagy re: “Examination of; McDermott Investment Services,” received February 3, 2015	Fed. R. Evid. 403	OVERRULED
341	Email from Mark Fowler to Diane Hagy re: “McDermott response – update,” dated February 4, 2015	Fed. R. Evid. 403	OVERRULED
342	“Significant Exam Findings: McDermott Investment Services, LLC and McDermott Investment Advisors, LLC”	Fed. R. Evid. 403	OVERRULED
343	Email from Mark Fowler to Paul Lapinski re: “McDermott,” dated February 20, 2015	Fed. R. Evid. 403	OVERRULED
344	Email from Karen Ackerman to Mark Fowler re: “McDermott,” dated February 19, 2015	Fed. R. Evid. 403	OVERRULED
345	Email from Karen Ackerman to Mark Fowler re: [redacted], dated March 24, 2015	Fed. R. Evid. 403	OVERRULED
346	Email from Diane Hagy to Karen Ackerman, <i>et al.</i> , re: “McDermott KPI,” dated March 31, 2015	Fed. R. Evid. 403	OVERRULED
347	Email from Diane Hagy to Brian Sniveley, <i>et al.</i> , re: “PLRO McDermott KPI.docx,” dated April 7, 2015	Fed. R. Evid. 403	OVERRULED

² To the extent the Commission is unable to produce a document showing the policies and procedures in effect during the Relevant Period, Defendants may move to introduce Exhibit 335 at trial.

Exhibit	Document	Objection	Ruling
348	Email from Karen Ackerman to Mark Fowler re: “Questions re McDermott,” dated April 9, 2015	Fed. R. Evid. 403	OVERRULED
349	Email from Mark Fowler to Karen Ackerman re: “McDermott – material requests,” dated April 9, 2015	Fed. R. Evid. 403	OVERRULED
350	Email from Karen Ackerman to Mark Fowler re: “Call on McDermott,” dated April 9, 2015	Fed. R. Evid. 403	OVERRULED
351	Email from Karen Ackerman to Mark Fowler re: “McDermott,” dated April 9, 2015	Fed. R. Evid. 403	OVERRULED
352	Email from Mark Fowler to Karen Ackerman re: “McDermott,” dated April 13, 2015	Fed. R. Evid. 403	OVERRULED
353	Email from Diane Hagy to Mark Fowler re: “BD Staff Meeting,” dated April 30, 2015	Fed. R. Evid. 403	OVERRULED
354	Email from Karen Ackerman to Mark Fowler re: [redacted], dated May 1, 2015	Fed. R. Evid. 403	OVERRULED
355	Email from Karen Ackerman to Diane Hagy re: “Thursday – McDermott,” dated May 15, 2015	Fed. R. Evid. 403	OVERRULED
356	Email from Diane Hagy to Karen Ackerman re: “McDermott,” dated May 18, 2015	Fed. R. Evid. 403	OVERRULED
359	Notes re: “McDermott Investment Services, LLC”	Fed. R. Evid. 403	OVERRULED
360	Joint Rule 26(f) Report	Fed. R. Evid. 403	SUSTAINED
361	Plaintiff’s Initial Disclosures	Fed. R. Evid. 403	SUSTAINED
362	Plaintiff Securities and Exchange Commission’s Statement of Undisputed Facts in Support of its Motion for Summary Judgment	Fed. R. Evid. 403 (with exception of undisputed facts)	SUSTAINED
363	Defendants’ and Relief Defendant’s Statement of Additional Facts that Preclude Summary Judgment	Fed. R. Evid. 403 (with exception of undisputed facts)	SUSTAINED
364	Plaintiff’s Response to Defendants’ and Relief Defendant’s Statement of Additional Facts	Fed. R. Evid. 403 (with exception of undisputed facts)	SUSTAINED
365	Sales Charges Analysis (2013 – 2014)	Fed. R. Evid. 403	OVERRULED
366	Sales Charges Analysis (2013 – 2017)	Fed. R. Evid. 403	SUSTAINED